IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.7839 OF 2006

Suresh Dagdu Gaikwad ...Petitioner

Versus

Chhatrapati Narayan Chavan ...Respondent

Shri G.M.Savagave for the Petitioner.
Shri Pankaj Deokar for the Respondent.

CORAM : ABHAY S.OKA, J.
DATED : APRIL 18, 2007.

P.C.:

1. Heard Advocates appearing for the parties. The learned Advocate for the Petitioner states that he has deposited a sum of Rs.3,500/- with the trial Court on 11th April, 2007 and he has produced a receipt issued by the trial Court for the perusal of the Court. The challenge in this Petition under Article 227 of the Constitution of India is to the order dated 05th August, 2006 passed by the trial Court by which Application made by the Petitioner at Exhibit 79 has been rejected. The Petitioner is the original defendant and the Respondent is the original plaintiff. By order dated 17th June, 2006 the learned trial Judge allowed the Application at Exhibit 76 filed by the Petitioner. By the said order, the petitioner was allowed to cross-examine the witnesses examined by the Respondent subject to payment of costs of Rs.1,500/-. The amount was to be deposited

on or before 01st July, 2006. The said amount could not be deposited within time. Thereafter, an Application at Exhibit 78 was made by the Petitioner for extension of time to deposit the amount of costs. The said Application was rejected by order dated 13th July, 2006. similar prayer was made in Application at Exhibit 79 which has been rejected by the learned trial Judge by order dated 05th August, 2006. Both the orders dated 13th July, 2006 and 05th August, 2006 have been challenged in this Petition. After having heard the learned Advocates appearing for the parties, I find that one more opportunity deserves to be granted to the Petitioner to cross-examine the witnesses examined by the Respondents. The learned trial Judge has directed him to pay costs of Rs.500/-. Now the Petitioner has deposited a sum of Rs.3,500/- by way of costs payable to the Respondent. Therefore, prejudice which may be caused to the Respondent can be adequately compensated by permitting him to withdraw the amount of costs.

2. Hence, I pass the following order:

(i) The orders dated 13th July, 2006 and 05th August, 2006 are quashed and set aside and the Applications made by the Petitioner at Exhibits 78 and 79 are disposed of by directing that the

order dated 17th June, 2006 passed below Application at Exhibit 76 stands restored. Therefore, it will be open for the Petitioner to cross-examine the witnesses examined by the Respondent.

(ii) It is made clear that the Petitioner will not seek adjournment on any unreasonable grounds. The trial Court will permit the Respondent to withdraw the sum of Rs.3,500/- deposited by the Petitioner.

(iii) Writ Petition is allowed in above terms.

(iv) Parties and the concerned Court to act upon an authenticated copy of this order.

JUDGE